



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2015-0592; FRL-9943-15-Region 5]**

**Air Plan Approval; Minnesota; Revision to Visibility Federal**

**Implementation Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is revising the Minnesota Federal implementation plan (FIP) for visibility, to establish emission limits for Northern States Power Company's (NSP's) Sherburne County Generating Station (Sherco), pursuant to a settlement agreement. The settlement agreement, signed by representatives of EPA, NSP, and three environmental groups, was for resolution of a lawsuit filed by the environmental groups for EPA to address any contribution from Sherco to reasonably attributable visibility impairment (RAVI) that the Department of Interior (DOI) certified was occurring at Voyageurs and Isle Royale National Parks.

**DATE:** This final rule is effective on **[insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2015-0592. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although

listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886-6067 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6067, [summerhays.john@epa.gov](mailto:summerhays.john@epa.gov).

**SUPPLEMENTARY INFORMATION:** This supplementary information section is arranged as follows:

- I. What Events Led to a Settlement Agreement Regarding Sherco?
- II. What Comments did EPA Receive on its Proposed Action?
- III. What Action is EPA Taking?

#### IV. Statutory and Executive Order Reviews.

##### **I. What Events Led to a Settlement Agreement Regarding Sherco?**

Section 169A of the Clean Air Act provides for a visibility protection program and sets forth as a national goal "the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution." Pursuant to these statutory requirements, EPA promulgated regulations entitled "Visibility Protection" in subpart P of title 40 of the Code of Federal Regulations (40 CFR), specifically in 40 CFR 51.300 *et seq.*, which include separate requirements addressing RAVI and regional haze. 45 FR 80084 (December 2, 1980).

Pursuant to these regulations, the Department of the Interior (DOI) sent EPA a letter dated October 21, 2009, certifying the existence of RAVI at Voyageurs and Isle Royale National Parks and citing modeling results from Minnesota's regional haze plan in support of a view that Sherco is a source of RAVI in these areas. After three years passed, a group of three environmental groups filed a lawsuit alleging that EPA had an obligation to evaluate whether Sherco was a source of this RAVI and if so to promulgate requirements to address this RAVI. EPA, the environmental groups, and NSP then held settlement

discussions leading to a settlement agreement that became final on July 24, 2015.

In the settlement agreement, EPA agreed to propose specific emission limits, and propose to conclude that these limits addressed the concern identified by DOI, such that no need existed for any review of whether Sherco is a RAVI source or whether best available retrofit technology (BART) at Sherco is warranted for addressing RAVI. On August 11, 2015, DOI wrote to EPA regarding the settlement agreement, stating that "the settlement achieves an outcome that addresses our visibility concerns at Voyageurs and Isle Royale National Parks." EPA published its notice of proposed rulemaking on October 27, 2015, at 80 FR 65675. The notice provides further details regarding the RAVI regulations, the background and history of settlement discussions for Sherco, and the limits that EPA proposed.

## **II. What Comments did EPA Receive on its Proposed Action?**

EPA received no comments on its proposed rule, and EPA has received no new information that would warrant promulgating a rule differing in any way from the proposed rule.

## **III. What Action is EPA Taking?**

EPA is promulgating the emission limits for Sherco that were identified in the settlement agreement signed on May 15,

2015, by representatives of EPA, three environmental groups, and NSP. Specifically, EPA is promulgating the following limits:

- For stack SV001, serving Units 1 and 2, a limit on SO<sub>2</sub> emissions of 0.050 lbs/MMBtu, as a 30-day rolling average, determined as the ratio of pounds of emissions divided by the heat input in MMBtu, both summed over 30 successive boiler-operating days, beginning on the 30-boiler-operating-day period ending September 30, 2015. For purposes of this limit, a boiler operating day is defined as a day in which fuel is combusted in either Unit 1 or Unit 2 (or both).

- For Unit 3, a limit on SO<sub>2</sub> of 0.29 lbs/MMBtu, as a 30-day rolling average, also determined as the ratio of pounds of emissions divided by the heat input in MMBtu, both summed over 30 successive boiler-operating days, beginning on the 30-boiler-operating-day period ending May 31, 2017.

Additionally, in light of DOI's August 11, 2015, letter, EPA is concluding that the incorporation of these SO<sub>2</sub> emission limits into the Minnesota visibility FIP satisfies any outstanding obligation EPA has with respect to DOI's 2009 RAVI certification. EPA intends to conduct no analysis of the magnitude or origins of visibility impairment at Voyageurs or Isle Royale or review of potential BART control options at Sherco in response to this certification.

#### **IV. Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review and  
Executive Order 13563: Improving Regulation and Regulatory  
Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA. Because the FIP applies to just one facility, the Paperwork Reduction Act does not apply. See 5 CFR 1320.3(c).

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. EPA's rule adds additional controls to a certain source. The Regional Haze FIP revisions that EPA is

promulgating here would impose Federal control requirements to resolve concerns that one power plant in Minnesota is unduly affecting visibility at two national parks. The power plant and its owners are not small entities. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does

not apply to this rule. However, EPA did discuss this action in a July 16, 2015, conference call with Michigan and Minnesota tribes, and EPA invited further comment from tribes that may be interested in this action.

*G. Executive Order 13045: Protection of Children from  
Environmental Health Risks and Safety Risks*

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. However, to the extent this rule will limit emissions of SO<sub>2</sub>, the rule will have a beneficial effect on children's health by reducing air pollution.

*H. Executive Order 13211: Actions Concerning Regulations That  
Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions to Address*

*Environmental Justice in Minority Populations and Low-Income  
Populations*

The EPA believes the human health or environmental risk addressed by this action will **not** have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. We have determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

*K. Congressional Review Act (CRA)*

This rule is exempt from the CRA because it is a rule of particular applicability.

*L. Judicial Review*

Under section 307(b) (1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may

be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b) (2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur dioxide, Reporting and recordkeeping requirements, visibility protection.

Dated: February 24, 2016.

Gina McCarthy,  
Administrator.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Section 52.1236 is amended by adding paragraph (e) to read as follows:

**§ 52.1236 Visibility protection.**

\* \* \* \* \*

(e)(1) On and after the 30-boiler-operating-day period ending on September 30, 2015, the owners and operators of the facility at 13999 Industrial Boulevard in Becker, Sherburne County, Minnesota, shall not cause or permit the emission of SO<sub>2</sub> from stack SV001 (serving Units 1 and 2) to exceed 0.050 lbs/MMBTU as a 30-day rolling average.

(2) On and after the 30-boiler-operating-day period ending on May 31, 2017, the owners and operators of the facility at 13999 Industrial Boulevard in Becker, Sherburne County, Minnesota, shall not cause or permit the emission of SO<sub>2</sub> from Unit 3 to exceed 0.29 lbs/MMBTU as a 30-day rolling average.

(3) The owners and operators of the facility at 13999 Industrial Boulevard in Becker, Sherburne County, Minnesota, shall operate continuous SO<sub>2</sub> emission monitoring systems in compliance with 40

CFR 75, and the data from this emission monitoring shall be used to determine compliance with the limits in this paragraph (e).

(4) For each boiler operating day, compliance with the 30-day average limitations in paragraphs (e)(1) and (e)(2) of this section shall be determined by summing total emissions in pounds for the period consisting of the day and the preceding 29 successive boiler operating days, summing total heat input in MMBTU for the same period, and computing the ratio of these sums in lbs/MMBTU. Boiler operating day is used to mean a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam-generating unit. It is not necessary for fuel to be combusted the entire 24-hour period. A boiler operating day with respect to the limitation in paragraph (e)(1) of this section shall be a day in which fuel is combusted in either Unit 1 or Unit 2. Bias adjustments provided for under 40 CFR 75 appendix A shall be applied. Substitute data provided for under 40 CFR 75 subpart D shall not be used.